



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SENSITIVE

OFFICE OF THE CHAIRMAN

In the matter of

**CBS Broadcasting, Inc.
Kerry-Edwards 2004, Inc., and
Robert Farmer, in his official capacity
as Treasurer**

MURs 5540 and 5545

STATEMENT OF REASONS

Chairman Scott E. Thomas

I write this Statement only to address the Statement of Reasons issued by my colleagues Commissioners Mason and Smith. They note that if the allegations in the complaints are true, CBS was involved in an "intentional effort . . . to sway the election against George W. Bush." They then deduce that if CBS can do this, they can find no justification for denying the press exemption "to any periodical publisher of political news or views."

As to the first point, an independent review of the circumstances surrounding the *60 Minutes Wednesday* segment at issue did not find any evidence of political bias on the part of CBS. The Independent Review Panel was comprised of Dick Thornburgh, former Attorney General of the United States under a Republican administration, and Louis D. Boccardi, former Chief Executive Officer and President of *The Associated Press*. In a 224 page report, the Panel stated that it "[did] not find a basis to accuse those who investigated, produced, vetted or aired the Segment of having a political bias."¹ It further noted:

60 Minutes Wednesday was hardly alone in pursuing the story. Other mainstream media, including *USA Today*, *The New York Times* and *The Associated Press*, were pursuing the same story in what was clearly a competitive race to be first. In fact, *USA Today* on September 9 published a similar story relying on the same Killian documents, but has not been as criticized for its story as CBS News has been for the September 8 Segment.²

¹ Report of the Independent Review Panel on the September 8, 2004 *60 Minutes Wednesday* Segment "For the Record" Concerning President Bush's Texas Air National Guard Service, p. 211, Jan. 5, 2005.

² *Id.*, pp. 211-212.

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There are other indications CBS was politically objective in its coverage of the 2004 campaign. Indeed, a review of the major networks' political coverage in the last three days of the campaign by Media Tenor (a media monitoring group) concluded that "CBS and FOX overall were clearly more critical on Kerry than on Bush" ³ I myself don't remember CBS shying away from stories challenging the legitimacy of John Kerry's war honors, questioning Al Gore's connection to the development of the Internet, and examining Bill Clinton's Whitewater transactions any more than FOX shied away from stories suggesting Clinton White House involvement in the death of a senior aide. Incidentally, the mere fact that many of the sources and allegations in those stories proved unreliable or false likewise does not prove that CBS or FOX was politically biased in running them.

As for my colleagues' suggested reach of the press exemption, I believe they overstate the law. Clearly, not every person who periodically publishes news or views qualifies for the press exemption. A "political committee" cannot escape all the federal election campaign rules simply by demonstrating that every week it puts out a newsletter referring to recent events or containing commentary about political issues. Nor can a corporation in the business of manufacturing widgets or a union whose mission is representing the economic rights of workers. As the Supreme Court indicated in *Massachusetts Citizens for Life v. FEC*, 479 U.S. 238, 251 (1986), "[a] contrary position would open the door for those corporations and unions with in-house publications to engage in unlimited spending directly from their treasuries to distribute campaign material to the general public, thereby eviscerating § 441b's prohibition."

In the case at hand, there was no doubt that CBS was entitled to the press exemption for its *60 Minutes Wednesday* segment. The analysis set forth by our Office of General Counsel was on point and, in my view, needed no further explanation.

7/15/05

Date



Scott E. Thomas
Chairman

³ *Election 2004 Make or Break. Iraq and Security*, Media Tenor, p. 1, Nov. 2, 2004, <http://www.agendasetting.com/agenda/us-elec-night.pdf> (last accessed July 13, 2005).